

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish additional work-related conditions due to his March 3, 2011 employment injury; (2) whether appellant met his burden of proof to establish a recurrence of disability due to his March 3, 2011 employment injury; and (3) whether OWCP met its burden of proof to terminate appellant's eligibility for wage-loss compensation and medical benefits effective April 12, 2016 because he had no residuals of his March 3, 2011 employment injury after that date.

## **FACTUAL HISTORY**

On August 15, 2011 appellant, then a 56-year-old mason, filed a traumatic injury claim (Form CA-1) alleging that on March 3, 2011 he sustained a lumbar sprain when he climbed a ladder to a confined area and repaired a firewall.<sup>3</sup> He did not stop work, but rather continued in his regular position for the employing establishment. OWCP accepted that appellant sustained a lumbar sprain on March 3, 2011.<sup>4</sup>

In an August 19, 2011 report, Dr. Carol Hutchinson, an attending osteopath and Board-certified occupational medicine physician, noted that appellant complained of sharp pain in his back after the March 3, 2011 work injury and that the pain had worsened to include intermittent pain in both legs. Appellant had reported that he engaged in weight training once a week and cardiovascular training twice per week. Dr. Hutchinson diagnosed back pain, but suspected that he might also have spinal stenosis. With respect to her diagnosis of back pain, she noted, "I cannot determine with medical certainty whether this condition has been caused by or aggravated by the injury as described above or by the nature of the work or conditions of the workplace."

In an August 23, 2011 report, Dr. Abraham R. Byrd, III, an attending Board-certified family practitioner, noted that appellant reported feeling low back pain at the time of the March 3, 2011 work injury and developing sharp pain radiating from his low back into his buttocks approximately four months after March 3, 2011. He indicated that he suspected that appellant sustained a lumbar sprain due to the March 3, 2011 work injury and that this condition improved until July 2011 when he developed "an apparent bilateral sciatica or sciatic nerve irritation" without significant neurological deficit. On October 31, 2011 Dr. Byrd noted that appellant continued to report lumbar pain, but that his condition was slowly improving.

The findings of a January 17, 2012 magnetic resonance imaging (MRI) scan revealed that appellant had severe canal stenosis with degenerative changes and small broad-based disc herniation at L3-4, moderate canal narrowing, mild bilateral foraminal narrowing, and annular

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<sup>3</sup> Appellant later explained that he had to twist his back, balance himself, lift materials, and crawl/pull himself for an extended period in order to perform this task.

<sup>4</sup> Under different claim files, OWCP had previously accepted that appellant sustained a fractured right calcaneus (resolved) on October 14, 2007 (claim File No. xxxxxx984) and left lateral and medial meniscus tears on December 9, 2008 (File No. xxxxxx370).

degeneration at L4-5, and tiny paracentral disc protrusion with some mild mass effect on the traversing left S1 nerve root at L5-S1.<sup>5</sup>

In an August 27, 2013 report, Dr. Byrd diagnosed periodic back pain with positive findings on prior MRI scan for severe stenosis and disc protrusion traversing the S1 nerve root. He noted that appellant's symptoms, although described by him as intense when they occurred, were not disabling.

On September 6, 2013 appellant filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of disability due to his March 3, 2011 employment injury. He did not stop work around the time he filed the claim and listed the date of injury, March 3, 2011, as the date he sustained a recurrence of disability. Appellant indicated that he continued to experience pain from the March 3, 2011 injury.<sup>6</sup>

In a September 12, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his recurrence of disability claim. Appellant resubmitted a copy of the August 19, 2011 report of Dr. Hutchinson.

By decision dated December 4, 2013, OWCP denied appellant's claim for a recurrence of disability due to his March 3, 2011 employment injury. It noted that he had continued to work in his regular-duty position after the March 3, 2011 employment injury and that he had not missed any time from work due to the employment injury. OWCP determined that appellant had failed to submit medical evidence containing a rationalized medical opinion that he sustained disability due to the condition for which the March 3, 2011 injury was accepted, *i.e.*, lumbar sprain. It indicated that Dr. Byrd's reports contained diagnoses of low back conditions other than lumbar sprain, such as severe lumbar stenosis and disc protrusion, but that appellant had not provided a rationalized medical opinion establishing that these conditions were related to the March 3, 2011 work injury or that they caused disability.

The findings of a September 9, 2014 MRI scan showed left para-midline protrusion with mild central canal stenosis and likelihood of left nerve root impingement at L3-4, broad bulging annulus with moderate central canal stenosis at L4-5, and left para-midline protrusion with likelihood of left nerve root impingement at L5-S1. In a September 22, 2014 report, Dr. Byrd noted that appellant now reported that his pain generally did not run down his legs but "stays in low back." He diagnosed progressive low back pain and noted, "[Patient's] main concern is that he someday may need surgery and wants to be covered."

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<sup>5</sup> The record also contains the findings of January 19, 2012 electromyogram (EMG) testing of appellant's lower extremities.

<sup>6</sup> Appellant noted on the Form CA-2a that he had no work restrictions from the March 3, 2011 employment injury.

In a November 23, 2014 report, Dr. Byrd discussed his treatment of appellant's medical condition since August 23, 2011, recommended that he continue with conservative treatment, and indicated that his current diagnosis was lumbar spinal stenosis and herniated nucleus pulposus of the lumbar spine. He noted:

"This patient sustained a work-related injury on March 3, 2011. His initial symptoms are temporally related to that injury, and there is no evidence of any other cause. [The patient] only sought care when his symptoms persisted, and even then has tried [to] use every conservative means possible to get himself better, without resorting to more medical therapy. Indeed, his 'absence' of treatment in the intervening time simply reflects the fact that he had gotten himself better to a point that he could live with it, and only now comes because of some worsening of symptoms, leading him to have concern he may require further therapy in the future."

On December 3, 2014 OWCP received an undated letter in which appellant requested reconsideration of its December 4, 2013 decision. Appellant argued that he sustained a more severe condition on March 3, 2011 than the accepted lumbar sprain and that he, in fact, sustained several additional low back conditions that Dr. Byrd identified on the MRI scan findings of record. He indicated that the nature of the conditions sustained on March 3, 2011 was the issue that concerned him and noted, "I have not become further disable[d], nor has my pain changed/worsened."

In a December 3, 2014 letter received by OWCP on that date, a workers' compensation program manager for the employing establishment argued that medical reports of Dr. Byrd do not show that the degenerative conditions of appellant's low back were related to the March 3, 2011 employment injury or other work factors.

In December 2015 OWCP referred appellant to Dr. Michael A. Steingart, an osteopath and Board-certified orthopedic surgeon, for an examination and evaluation of the nature and extent of residuals from the March 3, 2011 employment injury.

In a February 5, 2016 report, Dr. Steingart discussed appellant's factual and medical history and reported the findings of the physical examination he performed on that date. He discussed the mechanism of the March 3, 2011 employment injury and noted that appellant currently reported having low back pain which occasionally radiated into his legs. Appellant reported that his general pain level was 2 out of 10 and indicated that he worked out in the gym five days a week and could bench press at least 130 pounds. Dr. Steingart reported that, upon physical examination of his back and lower extremities, appellant exhibited no evidence of muscle spasm or tenderness to palpation/percussion, but that there was some limitation of back motion. Straight-leg raising in the sitting and supine positions was negative. Dr. Steingart indicated that appellant had 5/5 motor strength in his knees, ankles, and feet, and that sensation was fully intact in his lower extremities. He posited that appellant exhibited no objective findings of the lumbar sprain sustained on March 3, 2011 and that he had not sustained any additional medical condition due to the mechanism of the March 3, 2011 injury or the treatment provided for the lumbar sprain. Dr. Steingart determined that appellant could return to his regular work as a mason without work restrictions, but noted that his nonwork-related

conditions, such as spinal stenosis, would cause appellant to “have challenges performing all the tasks needed.” He further noted:

“The claimant’s MRI scans performed on two separate occasions do report spinal stenosis especially noted at the L3-4 level with a chronic neuropathic condition as noted on the EMG. This can prevent the claimant’s ability to work. This condition is congenital and not related to a lumbar sprain. The clinical pain that the claimant has today is strictly in the low back, pointing to the sacrum. There are no objective findings that he would not recover from a lumbar sprain. Based on the official disability guidelines, the claimant would have resolved the symptoms after approximately six to eight weeks. The lumbar sprain/strain that he did have at the time of injury did not contribute in any manner or form to any of the above issues, as that is completely resolved by this time. Additionally, there was a hiatus as noted in the medical records from 2012 to 2014. The claimant reported having further back issues. However, his activities level, the fact that his working out in the gym (weights, bending, squatting, kneeling), does indicate that any further symptoms are more related to his workout routine and his activity level rather than a lumbar sprain/strain that was noted at the time of the original injury.”<sup>7</sup>

By decision dated March 9, 2016, OWCP denied modification of its December 4, 2013 decision denying appellant’s claim for recurrence of disability due to his March 3, 2011 employment injury. It also indicated that it was considering appellant’s claim, as expressed in his reconsideration letter received on December 3, 2014, that he sustained a more severe condition on March 3, 2011 than the accepted lumbar sprain. OWCP found that appellant had not submitted rationalized medical evidence showing that he sustained any work-related condition other than a lumbar sprain on March 3, 2011. It explained that, although Dr. Byrd identified several additional low back conditions as seen on the MRI scan findings of record, he failed to provide a rationalized medical opinion that they were related to the March 3, 2011 employment injury or other work factors. OWCP also determined that the well-rationalized February 5, 2016 report of Dr. Steingart showed that appellant’s claimed additional work-related conditions were not related to the March 3, 2011 employment injury.

In a letter dated March 10, 2016, OWCP advised appellant that it proposed to terminate his eligibility for wage-loss compensation and medical benefits because he ceased to have residuals of his March 3, 2011 employment injury after that date. It informed him that the proposed termination action was justified by the well-rationalized February 5, 2016 report of Dr. Steingart, OWCP’s referral physician. OWCP provided appellant 30 days to submit evidence and argument challenging the proposed termination action.

Appellant did not submit any evidence or argument in the period allotted by OWCP’s March 10, 2016 letter.

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<sup>7</sup> Appellant received wage-loss compensation for hours lost from work on February 5, 2016 for attending the OWCP referral examination conducted by Dr. Steingart on that date.

In an April 12, 2016 decision, OWCP terminated appellant's eligibility for wage-loss compensation and medical benefits effective April 12, 2016 because he had no residuals of his March 3, 2011 employment injury after that date. It found that the weight of the medical opinion evidence regarding appellant's work-related disability and need for medical treatment rested with the February 5, 2016 report of Dr. Steingart.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any specific condition for which compensation is claimed are causally related to the employment injury.<sup>8</sup> The medical evidence required to establish a causal relationship between a claimed medical condition and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained a lumbar sprain on March 3, 2011. Appellant did not stop work but rather continued in his regular position at the employing establishment. On September 6, 2013 he filed a Form CA-2a alleging that he sustained a recurrence of disability due to his March 3, 2011 employment injury. By decision dated December 4, 2013, OWCP denied appellant's claim for a recurrence of disability due to his March 3, 2011 employment injury. On December 3, 2014 it received an undated letter in which he requested reconsideration of its December 4, 2013 decision. Appellant argued that he had sustained a more severe condition on March 3, 2011 than simply the accepted lumbar sprain and that he, in fact, sustained several additional low back conditions found on the MRI scan findings of record. By decision dated March 9, 2016, OWCP denied modification of its earlier December 4, 2013 decision. It also found that appellant had failed to establish any additional work-related condition on March 3, 2011.

The Board finds that appellant failed to meet his burden of proof to establish additional work-related conditions due to his March 3, 2011 employment injury.

Appellant submitted reports in which Dr. Byrd, an attending physician, provided diagnoses of low back conditions other than lumbar sprain, such as severe lumbar stenosis and disc protrusion traversing the S1 nerve, but he did not provide a rationalized medical opinion establishing how these conditions were related to the March 3, 2011 employment injury.

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<sup>8</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>9</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

In an August 23, 2011 report, Dr. Byrd indicated that he suspected that appellant sustained a lumbar sprain due to the March 3, 2011 work injury and that this condition improved until July 2011 when he developed “an apparent bilateral sciatica or sciatic nerve irritation” without significant neurological deficit. On August 27, 2013 he diagnosed periodic back pain with positive findings on prior MRI scan for severe stenosis and disc protrusion traversing the S1 nerve root. In a report dated November 23, 2014 report, Dr. Byrd indicated that appellant’s current diagnosis was lumbar spinal stenosis and herniated nucleus pulposus of the lumbar spine. He noted, “This patient sustained a work-related injury on March 3, 2011. Dr. Byrd initial symptoms are temporally related to that injury, and there is no evidence of any other cause.”

The Board notes that Dr. Byrd’s reports do not contain a clear opinion that appellant sustained any medical condition other than a lumbar sprain due to the March 3, 2011 work injury. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Dr. Byrd did not discuss the March 3, 2011 employment injury in any detail or explain the medical process through which it could have been responsible for medical conditions other than a lumbar sprain. Therefore, appellant did not meet his burden of proof to establish additional work-related conditions due to his March 3, 2011 employment injury.<sup>11</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>12</sup> This burden includes the necessity of furnishing rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and supports that conclusion with sound medical rationale.<sup>13</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

As noted above, appellant filed a Form CA-2a on September 6, 2013 alleging that he sustained a recurrence of disability due to his March 3, 2011 employment injury and OWCP

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<sup>10</sup> See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>11</sup> On appeal appellant argued that Dr. Byrd’s reports show that he sustained medical conditions other than a lumbar sprain due to the March 3, 2011 work injury, but the Board has explained why Dr. Byrd’s reports do not establish such additional conditions.

<sup>12</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”

<sup>13</sup> *L.F.*, Docket No. 15-1069 (issued August 12, 2015); *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

<sup>14</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

denied this claim in decisions dated December 4, 2013 and March 9, 2016. The Board finds that appellant failed to meet his burden of proof to establish a recurrence of disability due to his March 3, 2011 employment injury.

The Board notes that appellant continued to work in his regular-duty position after the March 3, 2011 employment injury and that he did not miss any time from work due to the employment injury, other than a few hours of wage loss due to his participation in a second opinion examination on February 5, 2016.<sup>15</sup> The Board finds that appellant failed to establish disability due to the condition for which the March 3, 2011 employment injury was accepted, *i.e.*, lumbar sprain. As explained above, the medical evidence of record, including the reports of Dr. Byrd, do not show that he sustained any medical condition other than a lumbar sprain due to the March 3, 2011 work injury. The Board finds that none of the medical reports of Dr. Byrd contain an opinion that appellant had disability due to the only accepted medical condition in this case, *i.e.*, a lumbar sprain. Appellant has not submitted a rationalized medical report establishing that he sustained a recurrence of disability due to his March 3, 2011 employment injury and, thus, appellant has failed to meet his burden of proof.

### **LEGAL PRECEDENT -- ISSUE 3**

Under FECA, once OWCP has accepted a claim it has the burden of proof to justify termination or modification of compensation benefits.<sup>16</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>17</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>18</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP met its burden of proof to terminate eligibility for wage-loss compensation and medical benefits effective April 12, 2016 because he had no residuals of his March 3, 2011 employment injury after that date. The Board finds that the weight of the medical evidence with respect to residuals of the March 3, 2011 employment injury is represented by the thorough, well-rationalized opinion of Dr. Steingart, OWCP's referral physician. The February 5, 2016 report of Dr. Steingart establishes that appellant had no residuals of his March 3, 2011 employment injury after April 12, 2016.

In his February 5, 2016 report, Dr. Steingart reported that, upon physical examination of his back and lower extremities, appellant exhibited no evidence of muscle spasm or tenderness to palpation/percussion, but that there was some limitation of back motion. Straight-leg raising in the sitting and supine positions was negative. Dr. Steingart indicated that appellant had 5/5

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<sup>15</sup> Appellant did not stop work around the time he filed his recurrence of disability claim on September 6, 2013. On the Form CA-2a, he listed the date of injury, March 3, 2011, as the date he sustained a recurrence of disability.

<sup>16</sup> *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>17</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

<sup>18</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).



motor strength in his knees, ankles, and feet, and that sensation was fully intact in his lower extremities. He posited that appellant exhibited no objective findings of the lumbar sprain sustained on March 3, 2011 and that he had not sustained any additional medical condition due to the mechanism of the March 3, 2011 injury or the treatment provided for the lumbar sprain. Dr. Steingart determined that appellant could return to his regular work as a mason without work restrictions, but noted that his nonwork-related conditions, such as spinal stenosis, would cause appellant to “have challenges performing all the tasks needed.” He further indicated that appellant’s spinal stenosis was congenital and not related to the March 3, 2011 lumbar sprain, that the lumbar sprain resolved in six to eight weeks, and that the lumbar sprain did not contribute in any manner to another medical condition. Dr. Steingart noted, “[Appellant’s] activities level, the fact that his working out in the gym (weights, bending, squatting, kneeling), does indicate that any further symptoms are more related to his workout routine and his activity level rather than a lumbar sprain/strain that was noted at the time of the original injury.”

The Board has reviewed the opinion of Dr. Steingart and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Steingart provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>19</sup> He provided medical rationale for his opinion by explaining that appellant ceased to have objective residuals of his March 3, 2011 employment injury. Dr. Steingart also explained that appellant’s continuing back symptoms were related to the progression of his nonwork-related back conditions and his workout routine in the gym.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish additional work-related conditions due to his March 3, 2011 employment injury or to establish a recurrence of disability due to his March 3, 2011 employment injury. The Board further finds that OWCP met its burden of proof to terminate eligibility for wage-loss compensation and medical benefits effective April 12, 2016 because he had no residuals of his March 3, 2011 employment injury after that date.

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<sup>19</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 12 and March 9, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 25, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board